

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Express
Priority Mail Express Contract 19

Docket No. MC2014-41

Competitive Product Prices
Priority Mail Express Contract 19 (MC2014-41)
Negotiated Service Agreement

Docket No. CP2014-74

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
PRIORITY MAIL EXPRESS CONTRACT 19 TO THE COMPETITIVE PRODUCT LIST

(September 4, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2176.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express Contract 19 to the competitive product list.² The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governor's Decision No. 11-6. The Postal Service also filed (under seal) a contract related to the proposed new product, and supporting financial data.

According to the Postal Service, Priority Mail Express Contract 19 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. §

¹ PRC Order No. 2176, Notice and Order Concerning the Addition of Priority Mail Express Contract 19 to the Competitive Product List, September 2, 2014.

² Request of the United States Postal Service to Add Priority Mail Express Contract 19 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 28, 2014 (Request).

3632(b)(3). *Request* at 2. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors' Decision No. 11-6.³ The Postal Service further asserts that the Statement of Supporting Justification provides support for adding Priority Mail Express to the competitive product list and the compliance of the contract with 39 U.S.C. § 3633(a). *Request* at 2 and 3.

The contract's effective date will be set the day following the date on which the Commission issues all necessary regulatory approval. *Attachment B* at 1. The contract is to expire three (3) years from the effective date, unless (1) terminated by either party with thirty (30) day's notice to the other party in writing, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent contract between the Parties, (4) ordered by the Commission or a court, or (5) required to comply with subsequently enacted legislation. *Id.* at 4.

COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail Express Contract 17 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract should generate sufficient revenues to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3652, the Postal Service requests that Priority Mail Express Contract 19 be added to the competitive product list. 39 U.S.C. § 3652 requires the Commission to consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3652(b)(1). Products over which the Postal Service exercises

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3652(b)(1). *Request* at 2. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add Priority Mail Express Contract 19 to the competitive product is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service's Request, it appears the negotiated prices in the contract should generate sufficient revenues to cover costs during the first year of the agreement.

The contract is expected to remain in effect for a period of three years. The Postal Service provides no data to demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) during the second and third years of the contract. This concern is mitigated somewhat by the fact that the terms of the contract provide a formula for an annual adjustment in the negotiated rates that would ordinarily permit revenues to cover costs during years 2 and 3.⁴ The Commission also has an opportunity to conduct an annual compliance review in its Annual Compliance Determination.

⁴ See Appendix B of Request of the United States Postal Service to Add Priority Mail Express Contract 19 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data. September 2, 2014. Page 3. However, in the event the Postal Service does not file for an annual increase in rates for competitive products or should file for a decrease in such rates, the cost coverage under the instant contract and all others where the contract prices are tied to the published rates will decline, if costs continue to increase.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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